

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1188 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

ABHESINH R DARBAR

Versus

MOHANLAL V GANDHI KARTA AND MANAGER OF HUF

Appearance:

MR SH SANJANWALA for Petitioner
MR MC SHAH for Respondent No. 1
NOTICE SERVED for Respondent No. 6

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/07/98

ORAL JUDGEMENT

This is tenant's revision under section 29(2) of the Bombay Rent Act, 1947.

The brief facts are that the respondent filed the suit for eviction of the revisionist on ground of non

payment of rent for more than six months after service of notice of demand and secondly on the grounds of tenant committing nuisance in the suit accommodation causing annoyance to the neighbouring occupiers and subletting the premises by the defendant no.1 to the defendant no.2 illegally without consent of the landlord.

The suit was resisted by the tenant on several grounds. He denied the plea of subletting and committing nuisance in the suit accommodation. Regarding arrears of rent it was admitted that rent was due since 1.2.1976 Rs.266/- p.m. it was tendered but the landlord refused to accept after service of notice of demand, hence the suit was required to be dismissed. The dispute regarding standard rent was also raised in the written statement.

The Trial Court found that the landlord failed to establish that the defendant no.1 had sublet the accommodation to the defendant no.2. It further found that the landlord failed to establish the allegation that the tenant is committing nuisance in the suit accommodation. It further found that there was no bonafide dispute regarding the standard rent and that the rent was not tendered to the landlord nor actually paid to him. The standard rent was fixed at Rs.200/- plus Rs.66/- as taxes. It was further held that in view of rent note Rs.266/- p.m. included the rent and taxes and this amount was payable monthly hence section 12(3)(a) of the Act is applicable. Accordingly, decree for eviction, arrears of rent and mesne profits was passed.

An appeal was preferred against the judgment and decree of the Trial Court which was dismissed. It is therefore, this revision.

Concurrent findings of the two Courts below regarding subletting and nuisance having been answered against the landlord required no interference in this revision in as much as these findings are based on proper appreciation of evidence on record and do not suffer from the vice of perversity.

The only point to be seen in this revision is whether the judgment and decree of the two Courts below are in accordance with law. Decree for eviction has been passed on grounds of arrears of rent exceeding six months i.e. for a period of 8 months under section 12(3)(a) of the Act. The Trial Court has rightly concluded that all the ingredients of section 12(3)(a) of the Act were made out. The rent was found due since 1.2.1976. Notice of demand was given on 28.9.1976. It was served on the

tenant in chief. No reply to this notice was given. It is clear that the dispute about standard rent was not raised by the tenant within a month of the service of notice of demand. He raised this dispute for the first time in his written statement which was rightly held by the Court below to be not a bonafide dispute regarding standard rent. The standard rent was fixed by the Court below at Rs.266/_p.m. keeping in view the recital in the rent note executed between the parties. The Trial Court disbelieved the defendants plea that the rent was tendered to the landlord which was refused by him after service of notice of demand. He further found that eight months rent was due when notice of demand was served. On this finding the Trial Court rightly concluded that all the ingredients of section 12(3)(a) were made out. It was justified in passing the decree for eviction and consequential decree for mesne profits.

The Appellate Court has also not committed illegality in dismissing the appeal and confirming the judgment and decree of the Trial Court.

Judgments and Decree of the two Courts below are in accordance with law, hence no interference in the revision is called for. Revision is accordingly dismissed with no order as to costs. Revisionist is however permitted to vacate the premises in dispute and hand over vacant possession to the landlord respondent within a period of six months from today on filing usual undertaking for vacating the premises within a period of four weeks from today. In this interregnum period of six month he will continue to pay on the 3rd day of each english calendar month the mesne profit awarded by the Trial Court. In the meantime the revisionist shall also deposit the arrears of rent less already deposited in the Court, if any.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt